

U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

LISA M. JOHNSON)	
)	
Plaintiff,)	
)	
vs.)	No:
)	
PREMIER HEALTHCARE OF FORT)	
WAYNE,)	
)	
Defendant)	

NOTICE OF REMOVAL

Defendant, PREMIER HEALTHCARE OF FORT WAYNE (“Premier”), through its undersigned attorneys, Lauren M. Penn and LITCHFIELD CAVO LLP, pursuant to 28 U.S.C. §1446 and §1331, hereby removes the above-captioned action, pending in the Allen Superior Court, Allen County, Indiana, from Indiana state court, as Cause No. 02D02-1902-CT-000090, to the United States District Court for the Northern District of Indiana, Fort Wayne Division. Removal is based upon 28 U.S.C. § 1331. As grounds for removal, Premier states as follows:

1. Plaintiff Lisa M. Johnson filed a Charge of Discrimination with the EEOC against her employer Defendant Premier Healthcare of Fort Wayne on or about June 21, 2018, EEOC No. 470-2018-03177 a copy of which is attached hereto as Exhibit 1. The EEOC issued it Dismissal and Notice of Rights/Notice of Suit Rights on November 15, 2018, a copy of which is attached hereto as Exhibit 2.

2. On February 13, 2019, Plaintiff then filed her Complaint with the Allen Superior Court, Allen County, Indiana (the “State Court Case”). The State Court Case was given Cause No. 02D02-1902-CT-000090. A true copy of the Complaint is attached as Exhibit 3.

3. The State Court Case alleges Plaintiff suffered from a serious medical condition constituting a disability/perceived disability/record of impairment for the purposes of the Americans with Disabilities Act of 1990 42 U.S.C. § 1211 *et seq.* (“ADA”), as amended by the ADA Amendments Act of 2008 (“ADAAA”) *See* Exhibit 3 ¶ 1.

4. Plaintiff also alleges that Defendant Premier was her employer “for purposes of the ADA.” *See* Exhibit 3 ¶ 2. Plaintiff further alleges that Premier discriminated against, retaliated against and wrongfully terminated Plaintiff on the basis of her disability/perceived disability/record of impairment “in violation of Plaintiff’s federally protected rights under the ADA and ADAAA.” *See* Exhibit 3 ¶ 14.

5. Pursuant to 28 U.S.C. § 1331 the District Courts have original jurisdiction of all civil actions arising from the Constitution, laws, or treaties of the United States.

6. A case arises under federal law within the meaning of 28 U.S.C. § 1331 if “a well-pleaded complaint establishes either that federal law creates the cause of action or that plaintiff’s right to relief necessarily depends on the resolution of a substantial federal question.” *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 689-90 (2006).

7. Here, Plaintiff’s cause of action is created by the ADA 42 U.S.C. § 1211 *et seq.*

8. In fact, Plaintiff’s Complaint expressly states that Premier’s termination of her was in violation of her “federally protected rights under the ADA” *See* Exhibit 3 ¶ 14. Plaintiff seeks recovery pursuant to the ADA. Plaintiff does not bring her action or seek recovery pursuant to any other law or regulation.

9. This Court possesses removal jurisdiction under 28 U.S.C. 1441, which permits removal of cases to federal court based on a federal question.

10. Plaintiff filed the State Court Case on February 13, 2019. Premier was served on February 21, 2019.

11. As such, this notice is being filed with the U.S. District Court for the Northern District of Indiana on March 11, 2019 within 30 days of determining that the case was removable to this Court. *See* 28 U.S.C. §1446(b).

12. This Court is situated in the district and division serving the location of the action pursuant to 28 U.S.C. §1446(a).

13. Defendant Premier will also file their “Notice of Filing Notice of Removal” with the Allen Superior Court, Allen County, Indiana. A true copy of the Notice is attached hereto as Exhibit 4 and will be served upon Plaintiff’s counsel pursuant to 28 U.S.C. §1446(a) and (d).

14. This Notice of Removal is signed in compliance with Fed. R. Civ. Pro. 11.

15. In the event Plaintiff moves for remand, or this Court considers remand *sua sponte*, Defendants respectfully requests the opportunity to submit supplemental authority, evidence and argument in support of removal, as may be appropriate.

WHEREFORE, this Action should proceed in the United States District Court for the Northern District of Indiana, Fort Wayne Division, as an action properly removed thereto.

Respectfully Submitted,

By: /s/ Lauren M. Penn
Attorney for Premier Healthcare
of Fort Wayne

Attorney for Defendant

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I, Lauren M. Penn, certify that on March 11, 2019, I caused to be electronically filed the foregoing Notice of Removal with the Clerk of the Court using the CMECF system which will send notification of such filing to the following and email transmission from vaughn@litchfieldcavo.com, at 303 West Madison, Chicago, Illinois, before the hour of 5:00 p.m. to:

Christopher C. Myers
809 S Calhoun Street
Suite 400
Fort Wayne, Indiana 46802
cmyers@myers-law.com

/s/ Lauren M. Penn